



2026:DHC:1553



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 12145/2024**Date of Decision: **12.02.2026****GURDIP SINGH**

.....Petitioner

(Through: Ms.Ranu Purohit (DHCLSC), Mr. Yashas RK, Ms. Niharika Singh, for the petitioner on behalf in Delhi High Court Legal Services Committee.)

versus

SUB DIVISIONAL MAGISTRATE & ORS.Respondents

(Through: Mr. Niraj Kumar, Sr. Central Govt. Counsel with Mr. Chaitanya Kumar, Advocates for R-2. SI Pooja.)

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed seeking the following reliefs:

- “a) Issue an appropriate Writ directing the Respondent No. 1 to take necessary action to ensure that the right to access the terrace/rooftop is provided to the Petitioner for fixing/repairing water tanks, TV antennas etc.
b) Issue an appropriate Writ directing Respondent No. 1 and 2 to take any further action as may be required to ensure that the rights of the Petitioner with respect to accessing the rooftop are not interfered with.
c) Pass any other Order that this Hon'ble Court may deem fit and proper in the interest of justice.”*

2. The petitioner claims that he and his wife are owners of, and have been residing in, what has been termed in the petition as the “*suit property*”

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2026:DHC:1553



bearing no. 3261, Second Floor, Opp. Pusa Wall, Ranjeet Nagar, New Delhi (hereinafter “**said Property**”). Respondent no. 3, one Mr. Chiranjit Singh, is then claimed to be a resident of the third floor in the same building.

3. It is stated by the petitioner that the passage to enter the premises as well as the staircase is common and the same common staircase goes to the rooftop/terrace of the said Property. The petitioner avers that the respondent no. 3 illegally installed a superstructure iron gate at the common stair case on the third floor of the said premises with purported *mala fide* intention to encroach all the common area of the stair case. The said structure allegedly has not been removed by respondent no. 3.

4. Respondent no. 3 in its counter-affidavit has denied all allegations and specifically pleaded, at para. 8 that the contested structure has been installed by him for safety purposes and access to the roof, or the stair case which leads to it, has never been denied to the petitioner.

5. It appears that the petitioner has also filed a civil suit titled ‘*Sh. Gurdeep Singh v. Sh. Charanjit Singh & Ors.*’ before the Senior Civil Judge (West), Tis Hazari Courts, Delhi bearing Civil Suit no. 308 of 2023 seeking the following reliefs:

“A. Pass an ad-interim injunction order in favour of the plaintiff and against defendant no. 1, direct the defendant no. 1 to remove the Superstructure Iron-Gate from the common staircase of property bearing no. 3261, 3rd Floor, Opp. Pusa Wall, Ranjeet Nagar, New Delhi-110008 with immediate effect or;

B. Pass an ad-interim injunction order in favour of the plaintiff and against the defendants, thereby directing and commanding the defendants their agents, associates, servants or any other persons working on their behalf etc. not to do any kind of beating, intimidation and mental torture and harassment against the plaintiff and her other family members; and

C. any other or further order/s as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in



favour of the plaintiff and against the defendants.”

6. It is, therefore, the case that the issues being contested in the civil suit are overwhelmingly similar to those sought to be agitated in the present petition. Even otherwise, a substantial adjudication of the case in hand would require this Court to delve into seriously disputed questions of facts, which the Court under Article 226 of the Constitution, cannot delve into.

7. In **Radha Krishnan Industries v. State of Himachal Pradesh**¹ the Supreme Court re-iterated the discretion available with the writ court to decline exercise of its powers when disputed questions of facts are involved.

The material portion of the judgement reads as under

“27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

8. This Court in **IDBI Bank Ltd. v. Power Finance Corporation Ltd.**² while analysing the impermissibility of entertaining writs which have their origin in private and not public law has held as under:

“26. Each of the issues so mentioned above, fall exclusively in the domain of private law and are fundamentally contractual in nature. There is no element of public law that this court finds involved in the present petition. The mere fact that the parties engaging in the contract are State or its instrumentalities, does not in itself make the issue relevant to public law. There is no determination of the rights relating to public law, nor is there a consideration relating to the public at large that needs to be factored in while deciding the dispute so argued by the parties. Issuance of the BGs by the petitioner at the instance of respondent no. 2 in the favour of respondent no. 3 and its encashment is purely governed by the terms of the BGs. The same is the commercial wisdom of the parties. It concerns the legal relationship between the parties involved, namely, the bank and the beneficiary of the guarantee. The enforcement is not the result of any

¹ (2021) 6 SCC 771.

² 2023 SCC OnLine Del 2909.



2026:DHC:1553



administrative order or State act involving the exercise of State power.

...

35. This court cannot countenance the argument that, whereas, otherwise, a dispute owing to its private law origins ought to have been agitated before a civil court, merely because the entity so breaching the contract is a State or its functionary, the case is to be considered under Article 226 of the Constitution of India. Arbitrariness, under Article 14 of the Constitution of India needs to be pleaded in exclusion to claims of pure breach of contract. In the present petition, the petitioner has not been able to persuade this court that the breach so alleged on the part of respondents is of such a nature that it may be considered arbitrary and deserves to be entertained under the writ jurisdiction of this court alone.”

9. In the facts and circumstances of the case, and the law discussed above, given that disputed question of facts are involved in the present *lis*, and also because a civil suit presently subsists between the contesting parties, the Court does not deem it fit to entertain the present petition.

10. The petitioner, however, shall be at liberty to take appropriate recourse in accordance with law.

11. With the aforesaid observation and liberty, the instant petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

FEBRUARY 12, 2026

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